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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,330	04/10/2006	Patrick J. Maas	923251-103060	7603
23644 7590 08/13/2008 BARNES & THORNBURG LLP P.O. BOX 2786 CHICAGO, IL 60690-2786			EXAMINER BURCH, MELODY M	
			ART UNIT 3683	PAPER NUMBER
			NOTIFICATION DATE 08/13/2008	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patent-ch@btlaw.com

Office Action Summary	Application No. 10/595,330	Applicant(s) MAAS, PATRICK J.	
	Examiner Melody M. Burch	Art Unit 3683	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/8/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 1-11 are rejected under 35 U.S.C. 102(a) as being anticipated by article "Motion Furniture" published by Furniture Today with a date of 9/29/03.

"Motion Furniture" discusses on pages 3-4 the seat spring assembly by Flexsteel known in the market as DualFlex which is shown in the Flexsteel Website pdf as comprising: a frame having a first and a second frame end with first and second sides connected to first and second transverse frame ends; a plurality of flat leaf springs having leaf spring first ends connected to the first frame end and leaf spring second ends connected to the second frame end; 0-1 V arch and/or 0-3 W arches with at least each leaf spring having one V or W arch adjacent the leaf spring first or second end; each leaf spring has a substantially flat center portion extending longitudinally and aligned horizontally to define a seating support surface; a cross piece, the cross piece spanning the leaf spring second ends, the leaf spring second ends being attached to the cross piece, and a plurality of coil springs, the coil springs connecting the cross piece to the second frame end to transmit loads from the leaf spring through the coil spring and second cross piece to the second frame end.

Response to Arguments

3. Applicant's arguments, see pg. 9 of the remarks, filed 5/8/08, with respect to the rejection(s) of claim(s) 1-3 under 35 USC 102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of the article under 35 USC 102(a). Examiner maintains that the "Motion Furniture" article discloses the Dualflex spring system. The article has a publication date of September 29, 2003. Since September 29, 2003, comes before the priority date of October 10, 2003, the article properly serves as a 102(a) prior art reference. Section 102(a) states that "[a] person shall be entitled to a patent unless – (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent." Section 2132 of the MPEP states that "[t]he statutory language known or used by others in this country' (35 U.S.C. § 102(a)), means knowledge or use which is accessible to the public. *Carella v. Starlight Archery*, 804 F.2d 135, 231 USPQ 644 (Fed. Cir. 1986)" and that "[t]he knowledge or use is accessible to the public if there has been no deliberate attempt to keep it secret. *W. L. Gore & Assoc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983)."

Applicant argues that the September 29, 2003, article fails to describe the invention and further argues that the webpage on which the Dualflex system is described has a recent date of 2006. In response to Applicant's argument, Examiner notes that the Flexsteel website from which the webpage was obtained has a copyright

date that ranges from 1996 to 2008. Further investigation using the Wayback Machine reveals that the Dualflex system described in the "Motion Furniture" article was described on the Flexsteel website at least on August 7, 2003. Linking to the following web address: <http://web.archive.org/web/20030807045946/http://www.flexsteel.com/> clicking on the "Quality Construction" link, and finally clicking on the "Recliners. What makes it a Flexsteel recliner?" link leads to a detailed description of the Dualflex system that existed at least as of August 7, 2003. There is nothing to suggest that the Dualflex system disclosed in the "Motion Furniture" article published on September 29, 2003 is not the Dualflex system set forth on the website having at date of August 7, 2003.

The article clearly sets forth that the invention was known by others in this country before the invention thereof by the applicant for a patent which is the effective filing date of October 10, 2003.

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melody M. Burch whose telephone number is 571-272-7114. The examiner can normally be reached on Monday-Friday (6:30 AM-3:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Siconolfi can be reached on 571-272-7124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3683

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

mmb

August 6, 2008

/Melody M. Burch/

Primary Examiner, Art Unit 3683